

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 4931 of 2006
With
CIVIL APPLICATION No. 14250 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**MANAGER, GUJARAT STATE ROAD TRANSPORT CORPORATION -
Appellant(s)****Versus****VANITABEN BHANABHAI HALPATI & 4 - Defendant(s)**

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Appearance :

MR HS MUNSHAW for Appellant(s) : 1,
None for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH**and****HONOURABLE MR.JUSTICE AKIL KURESHI****Date : 13/12/2006**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE M.S.SHAH)**

This appeal under Section 173 of the Motor Vehicles Act, 1988 is directed against the judgment and award dated 24.1.2005 of the Motor Accident Claims Tribunal, Valsad in MAC Petition No.1123 of 2002 (old No.340 of 1997) awarding compensation of Rs.2,59,352/- with interest at the rate of 9% per annum from the date of the claim petition till realization to the widow and three minor children of Bhanabhai Bhudhabhai Halpati who died at the age of 40 years in a motor vehicle accident.

2. On 6.4.1997 at about 8-15 PM, the deceased was driving his motor-cycle with a pillion rider on the road from Dungri to Talav Chora in Valsad district. When the motor-cycle was nearing Vaghaldhara bus stand and was taking a left turn, the bus belonging to the appellant-Corporation and being driven by original opponent No.1 (respondent No.5 herein) came at an excessive speed and while taking a sharp turn, knocked down the motor-cycle with the deceased and the pillion rider. On account of the serious head injuries sustained by the deceased, the deceased was admitted to the hospital where he succumbed to the injuries after seven days. The bus driver himself reported the accident to the police and in the FIR at Exh.35, the driver had stated that the accident took place while the bus was taking a turn. The widow and three minor children of the

deceased filed the claim petition for compensation of Rs.6 lakhs.

At the trial of the claim petition, the pillion rider on the motor-cycle (Jitubhai Dhansukhbhai Patel) was examined as a witness, but the bus driver did not step into the witness box. As per the eye-witness account of the pillion rider, the motor-cycle was being driven on the correct side of the road, but it was because the bus took a sharp turn that the motor-cycle with the deceased driver and the witness were knocked down. The Tribunal had, therefore, no hesitation in holding the bus driver to be solely responsible for the accident in question.

On the question of quantum of compensation, the Tribunal found that the deceased was engaged in the business of making and repairing fancy bullock carts. The deceased was essentially a carpenter. Even though the claimants' case was that the deceased was earning monthly income of Rs.4,000/- to Rs.5,000/-, the Tribunal assessed the monthly income of the deceased only at Rs.2,000/- per month and after deducting one-third amount as the personal expenses of the deceased, the dependency benefit was assessed at Rs.1,333/- per month = Rs.15,996/- per annum. The deceased was aged 40 years on the date of the accident and the Tribunal adopted the multiplier of 14 years. The compensation for loss of dependency benefit accordingly worked out to Rs,2,23,944/-. Adding thereto medical expenses of Rs.14,408/- and

conventional amounts for loss to the estate, for loss of consortium and funeral expenses etc., aggregating to Rs.21,000/-, the Tribunal made an award for total compensation of Rs.2,59,352/-.

3. Mr Munshaw with Mr Barot for the appellant-Corporation has submitted that the accident could not have taken place without some contributory negligence of the deceased who was driving the motor-cycle.

4. Having heard the learned advocate for the appellant-Corporation and having gone through the judgment under appeal, we find no fault with the appreciation of documentary and oral evidence made by the Tribunal. Admittedly the accident had taken place when the bus was taking a turn. The pillion rider who was examined as a witness on behalf of the claimants stated that the motor-cycle was taking a turn and because the bus took a sharp turn at an excessive speed, they were knocked down. The bus driver did not step in the witness box. In this set of circumstances, the finding given by the Tribunal that the accident was caused by the sole negligence of the bus driver is fully borne out from the material on record.

5. As regards the quantum of compensation, the learned advocate for the appellant is not in a position to assail the same because the assessment of income and even computation of compensation is done by the Tribunal in quite a conservative manner. We

also could not help noticing that while reducing the earnings of the deceased by the personal expenditure of the deceased had he remained alive and even while multiplying the monthly dependency by 12 months to arrive at an annual figure or even after multiplying the annual dependency by the multiplier of 14, the Tribunal has given exact figures which may be very well for arithmetical accuracy. However, rounding off the figures would have made calculations easier without casting heavy financial burden on the tortfeasor and his employer.

6. Since we do not find any substance in the appeal, the appeal is summarily dismissed.

The amount deposited by the appellant before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

7. Since the appeal is dismissed, the stay application is also dismissed.

8. A copy of this judgment shall be sent to the Presiding Officer of the Tribunal who rendered the judgment under appeal.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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